

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Tony S. Johnson, #300104,)	
)	
Petitioner,)	
)	
vs.)	Civil Action No. 6:09-1037-TLW-WMC
)	
McKither Bodison,)	
)	
Defendant.)	ORDER
)	
)	
)	

Petitioner, Tony S. Johnson (“petitioner”), brought this civil action, *pro se*, pursuant to 28 U.S.C. § 2254 on April 21, 2009. (Doc. #1).

This matter now comes before this Court for review of the Report and Recommendation (“the Report”) filed by United States Magistrate William M. Catoe, to whom this case had previously been assigned. In the Report, the Magistrate Judge recommends that the respondent’s motion for summary judgment be granted and the petition be dismissed. (Doc. # 29). Objections to the Report originally were due by March 1, 2010. Petitioner filed a motion for extension of time to file objections to the Report. (Doc. # 31). The motion was granted, giving Petitioner until March 22, 2010 to file any objections. (Doc. # 33). Petitioner filed objections on March 29, 2010. (Doc. # 35). However, Petitioner explains that his untimely filing was due to his “dorm being locked down on the 20th thru the 23rd.” (Doc. # 35-1). After considering Petitioner’s stated reason for the delay, this Court will permit the objections to be part of the record and will consider them in its review of this case. In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections...The Court is not bound by the recommendation

of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992)

(citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the objections. After careful review of the Report and objections thereto, the Court **ACCEPTS** the Report. (Doc. # 29). Therefore, the respondent's motion for summary judgment is **GRANTED**, (Doc. # 22), and the petition is **DISMISSED**. Additionally, Petitioner's motion to expand the record, (Doc. # 36), and motion for discovery, (Doc. # 37), are **DENIED**.

The Court has reviewed this petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings and 28 U.S.C. § 2253. Applying the provisions set forth at 28 U.S.C. § 2253(c), this Court concludes that it is appropriate to issue a certificate of appealability as to all issues raised herein.

IT IS SO ORDERED.

s/Terry L. Wooten
TERRY L. WOOTEN
United States District Judge

March 29, 2010
Florence, South Carolina